

# Exhibit B

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF KANSAS

3 IN RE:

5 URETHANE ANTITRUST LITIGATION CASE NO. 04-1616

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8 TRANSCRIPT OF TELEPHONE CONFERENCE  
9 before  
10 HONORABLE JOHN W. LUNGSTRUM  
11 on  
12 DECEMBER 7, 2012

13

APPEARANCES

14

For the Class  
15 Plaintiffs: Joseph Goldberg  
16 Freedman, Boyd, Hollander, Goldberg  
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1 THE COURT: Without objection -- and I hope  
2 we can do this -- I'm going to take up Document  
3 No. 2568, which has not been responded to, which  
4 dealt with those two witnesses, and tell you here is  
5 what I want you to do. That is, with regard to  
6 Fischer, I want to make this clear. As of now what I  
7 understand the situation is is that Dow has told the  
8 plaintiff that Fischer does not appear to be  
9 available live; therefore, he will be called by  
10 videotaped deposition. However, if the parties  
11 jointly are able to come to an accommodation for  
12 Fischer to testify live, I will certainly honor that  
13 accommodation, but that accommodation will require  
14 that he testify live during the plaintiffs'  
15 case-in-chief as well as the defendants' case. Is  
16 that clear with regard to Fischer?

17 MR. GUZMAN: It is. Thank you, your Honor.

18 THE COURT: Is that clear to you, Mr. Loeb?

19 MR. LOEB: I think so, your Honor. Thank  
20 you.

21 THE COURT: Beitel's situation, clarify  
22 that for me, if you would a little bit. I have lost  
23 a little bit of track here. Is he under your  
24 control, or is he a former also?

25 MR. LOEB: He's not. He's a former

1 employee who left Dow in 2004, but we are in contact  
2 with him, and he is planning to appear. So we don't  
3 have control, but we do have some contact, and we  
4 have that information about his willingness.

5 THE COURT: All right. Now, I have no idea  
6 what the circumstances may be with regard to Beitel's  
7 availability, but I tend to agree with the plaintiffs  
8 that he should -- these witnesses should be in a  
9 position to testify live in both sides' cases if at  
10 all possible. So what I am directing Dow to do on  
11 this point is, in your dealings with Mr. Beitel, I  
12 want to impress upon him that we appreciate his  
13 willingness to come but that he needs to make himself  
14 available, perhaps, twice. The first time, of  
15 course, would be at the plaintiffs' expense, not at  
16 Dow's expense, but through your good offices in  
17 brokering his attendance. But I'm inclined to  
18 enforce the notion that he would need to testify live  
19 in both cases or by video in both cases. All right?

20 MR. LOEB: Your Honor, I understand the  
21 direction and the ruling. The comment I would make  
22 on this is two-fold: One is, we will certainly use  
23 our contacts with Mr. Beitel to assure that he's as  
24 available, according to the court's wishes and  
25 schedule, as possible. Secondly, it's our very

1 present their case as they feel they need to present  
2 it. While it's good to be able to keep somebody from  
3 having to make a second trip, and it's good in some  
4 respects, less confusing in editing videotapes and so  
5 forth, perhaps, to have some continuity in the  
6 testimony; nonetheless, I think the primary objective  
7 should be to permit the plaintiffs to have their day  
8 in court, so to speak, to present their evidence the  
9 way they want to present it, and not have that  
10 coopted by the defendants being permitted to cross  
11 examine beyond the scope of the direct, as I say,  
12 except upon agreement of the parties to accommodate a  
13 witness or to deal with whatever other justification  
14 you all come to by yourselves. But when push comes  
15 to shove, if there's a disagreement, I'm going to  
16 lean to the side of allowing the plaintiffs to try  
17 their case the way they want to. So that's not a  
18 ruling; that's simply a guidance of where this will  
19 come down when the case -- when I have to make a  
20 ruling on that subject.

21 All right. Anything else that we ought to do  
22 here today? Thank you very much for your  
23 appearances, and we will be in touch with you as  
24 things develop. We're in recess.

25 (The telephone conference was adjourned.)